

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
PECOS DIVISION

JOHN P. BOERSCHIG,	:	
<i>Plaintiff,</i>	:	
	:	
<b>v.</b>	:	No. 4:16-cv-00056
	:	
TRANS-PECOS PIPELINE, LLC,	:	
<i>Defendant.</i>	:	
	:	

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**APPLICATION FOR PRELIMINARY INJUNCTION**

Plaintiff John P. Boerschig hereby requests a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure. The reasons supporting issuance of a preliminary injunction are more fully developed in the Memorandum in Support of Application for Preliminary Injunction that will be filed following this application; however, the basic outline of reasons is included here, as are the details concerning notice to Defendant Trans-Pecos Pipeline, LLC (“Trans-Pecos”).

1. Trans-Pecos is a private company that is in the process of obtaining right-of-way and constructing a pipeline to carry natural gas across three Texas counties. Trans-Pecos unilaterally determined the route, as well as how much property it needs.

2. Invoking sovereign powers of eminent domain delegated to it by Texas statutes, Trans-Pecos seeks to condemn about 13 acres of Mr. Boerschig’s nearly 11,000-acre ranch in Presidio County.

3. Trans-Pecos has initiated the condemnation process for Mr. Boerschig’s property, and a hearing has been scheduled to start at 9:00 a.m. on July 14, 2016, before three special commissioners designated to make the initial valuation determination under Tex. Prop. Code § 21.015. The special commissioners have no authority to make determinations or recommenda-

tions about Trans-Pecos's right to condemn Mr. Boerschig's private property. This is an administrative, not a judicial, proceeding and concerns itself only with the question of compensation for the forcible taking.

4. Once the special commissioners have made a valuation determination—and such a determination could, and likely would, come at the conclusion of the July 14<sup>th</sup> hearing—the condemnation process moves from the administrative to the judicial phase. After the valuation determination, Texas law would allow Trans-Pecos to take possession of Mr. Boerschig's property merely by depositing the amount of the valuation determined by the special commissioners into the registry of the state district court. Texas law would allow this forcible possession of private property by Trans-Pecos without affording Mr. Boerschig any advance opportunity to judicially challenge Trans-Pecos's right to take his property.

5. Mr. Boerschig seeks a preliminary injunction from this Court preventing Trans-Pecos from taking possession of his Presidio County ranch property until the Court has disposed of the two federal constitutional challenges he is making to Trans-Pecos's right as a private entity to take his property under Texas law. To be effective, such an injunction would need to be in place before the special commissioners' hearing commences on the morning of July 14, 2016.

6. Mr. Boerschig, through his attorney, is informing (by e-mailing the pleadings filed today, along with a cover letter) Trans-Pecos's counsel in the special commissioners' proceeding of the filing of this lawsuit and the fact that he is seeking a preliminary injunction before July 14<sup>th</sup> that prohibits Trans-Pecos from taking possession of his property while the merits of this lawsuit are pending for disposition by the Court.

7. Mr. Boerschig, through his attorney, also has notified the Attorney General of Texas of this application by serving the Attorney General with the complaint as indicated in ¶ 28 of the complaint.

8. A declaration by Mr. Boerschig is attached as an exhibit to this application.

Based upon these matters, and those presented in his complaint, and the memorandum to be filed in support of this preliminary injunction application, Mr. Boerschig urges the Court to set this matter down for hearing at some date before the morning of July 14, 2016, and, upon hearing, to grant this application for a preliminary injunction.

Respectfully submitted,

/s/ Renea Hicks

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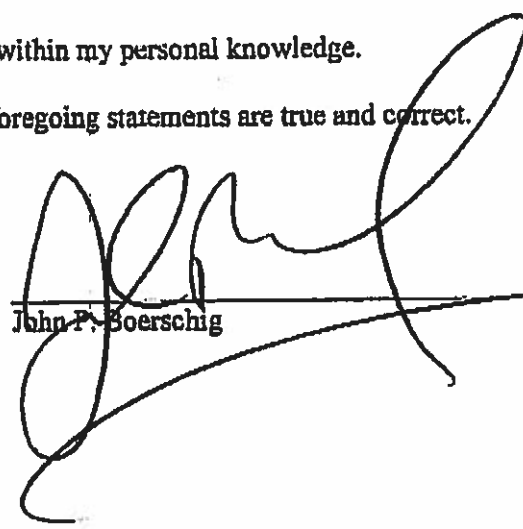
**Exhibit A to Application for Preliminary Injunction  
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**DECLARATION OF JOHN P. BOERSCHIG**

1. My name is John P. Boerschig. I am a resident of Washington County, Texas. I am the owner in fee simple of a ranch of 10,947.22 acres in Presidio County, Texas, commonly referred to as the "South Shurley Ranch."
2. Trans-Pecos Pipeline, LLC ("Trans-Pecos"), is a private pipeline company. On March 4, 2016, Trans-Pecos initiated eminent domain proceedings against me to condemn part of my South Shurley Ranch to use as a right-of-way for a Trans-Pecos natural gas pipeline ("TPP") that originates in Pecos County, Texas, and, according to Trans-Pecos, terminates in Presidio County, Texas, north of the City of Presidio. Trans-Pecos is seeking to condemn a 50-foot wide easement running across 11,271 feet of my ranch. This totals just under 13 acres of my property.
3. Trans-Pecos originated its condemnation by filing a petition in *Trans-Pecos Pipeline, LLC v. John P. Boerschig, et al.*, No. 7668, 394<sup>th</sup> Jud. Dist., Presidio County, Texas. There have been no judicial proceedings. The issue of valuation is first to be determined by a three-member group of special commissioners designated under Texas law. The special commissioners have scheduled a hearing on valuation to start at 9:00 a.m. on July 14, 2016.
4. I do not want Trans-Pecos, a private entity, to be able to take possession and begin construction-related activities for its pipeline on my South Shirley Ranch until it has been judicially determined that Trans-Pecos has a legal right to condemn and forcibly take my property. Trans-Pecos's construction activities would damage my property in ways that would be difficult financially and likely impossible physically to repair.
5. Trans-Pecos made a written offer of \$16,500.00, under Section 21.0113 of the Texas Property Code, for the right-of-way across my South Shurley Ranch.
6. The facts stated in this declaration are within my personal knowledge.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 1st day of July, 2016.



John P. Boerschig